

U.S. Application No.: 09/707,270
AMENDMENT B

Attorney Docket: 3968.027

27, 2002, is respectfully requested in view of the above amendments and the following remarks.

Applicants appreciate the indication of allowance of claims 1-4.

Entry of new claim 12 is respectfully requested. Claim 12 finds support in that if the process used to produce the particles does not include isopropanol, the particles produced by the process cannot contain isopropanol. Applicants recognize that entry of this claim after a final is discretionary with the Examiner; however, this claim was formulated at this time in order to respond to a rejection over Flugger et al. teaching cooling of particles in isopropanol, and to provide basis for arguments that, since the particles of the present invention are produced by a process which does not involve isopropanol, the particles are free of this contaminant which alters the sensory, physical and also the toxicological properties of the particle.

Turning now to the final Office Action, the Examiner maintains the position that the particles as claimed in claims 5-11 would have been obvious in view of Porzio in combination with Fulger.

Applicants respectfully traverse, and focus on the teachings of these two references relative to the present product-by-process claims.

The present invention is in the art of encapsulated flavorings, and particles prepared in accordance with claims 5-11 possess unexpectedly superior properties over the closest

prior art.

The prior art does not teach or suggest:

- (a) treating flavoring particles with **inert gas** as recited in the present claims,
- (b) the **gas velocity** of the inert gas recited in the present claims,
- (c) the **lack of exposed flavoring on the surface** of the particles when treated with inert gas at the claimed velocity, or
- (d) the **superior storage stability** of particles treated with inert gas at this velocity, in comparison to air

As discussed in the specification at page 2, lines 17-19:

The exposed flavoring on the surface of the particles forms an oily layer on the surface of the particle. This oily layer on the surface causes a marked impairment on the shelf life of particles.

On page 3, lines 13-15 of the present specification it is disclosed:

The novel flavoring particles of the present invention are virtually free at the surface from an oily layer from the flavoring used and have a high glass transition temperature. The flavoring is located virtually exclusively in the interior of the particles.

The superior storage stability property of the particles of the present invention is thus directly related to the processes recited in claims 5-11.

Neither Porizo et al nor Fluger et al teach cooling with **inert gas**. Fluger et al is cited for teaching cooling flavoring particles in ambient air on trays, by atmospheric pressure cyclical collection in an ice bath, by cooling in cold 99% isopropanol, or by pressure cooking.

Particles obtained by cooling down without inert gas treatment (e.g. ambient air, Fulger et al.) still have a significant amount of flavoring on the surface of the particle (oily layer), which is not desired. So, cooling down the particle with air quickens the cooling process, but fails to minimize the flavoring on the surface of the particle. Although this argument was already presented in the Amendment filed on Sept. 18, 2002, page 6, third sentence, the Examiner did not acknowledge this difference.

Particles obtained by cooling in cold 99% isopropanol (Fulger et al.) are virtually free of flavoring on the surface of the particle, but there will be a residual amount of isopropanol adhering to the particles, altering the sensory, physical and also the toxicological properties of the particle.

When performing experiments as described by Fulger et al. significant amounts of isopropanol were found in the particle, i.e. incorporated in and/or adhering to the particle. Up to 700 ppm of isopropanol were found in the particle shortly after the